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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON WILLIAMS,

Defendant and Appellant.

B262157

(Los Angeles County
Super. Ct. No. BA420614)

APPEAL from a judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Aaron Williams appeals from the judgment entered following a jury trial that resulted in his conviction for possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)).¹ The trial court sentenced Williams to two years in jail and two years of mandatory supervision. Williams contends the trial court erred by finding he failed to demonstrate good cause for an in camera *Pitchess* review² of one officer's file, and unduly restricting review of another's. Williams further contends that the court's ruling on the *Pitchess* motion violated *Brady v. Maryland* (1963) 373 U.S. 83. He also requests that this court review the sealed record of the trial court's in camera *Pitchess* review. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

On January 21, 2014, Los Angeles Police Department (L.A.P.D.) Officer Ryan Smith, his partner Officer Kliever, and approximately nine other officers responded to a citizen report of a family disturbance. When the officers arrived at the residence, Williams, Tashena Gardner, and other persons were inside. Gardner, who had rented the residence, consented to a search. Officer Jack Guerrero found a loaded, operable, stainless steel nine-millimeter handgun in a bottom drawer in the kitchen area.³

a. *The Pitchess motion*

Prior to trial, Williams filed a motion captioned "Motion for pretrial discovery including Board of Rights (*Pitchess* and *Brady*)" seeking personnel records of Officers Smith, Guerrero, Kliever, and another officer.⁴ The motion sought information regarding

¹ All further undesignated statutory references are to the Penal Code.

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

³ Because Williams's contentions on appeal pertain only to his pretrial *Pitchess* motion, we omit further discussion of the evidence adduced at trial.

⁴ On appeal, Williams challenges the trial court's rulings as to Officers Smith and Guerrero only.

complaints made against the officers “relating to acts of violation of constitutional rights, fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, illegal search/seizure; false arrest, perjury, dishonesty, writing of false police reports” or false reports to “cover up” the use of excessive force; the planting of evidence; false or misleading internal reports including false overtime or medical reports; and “any other evidence of misconduct amounting to moral turpitude.” The motion further sought any exculpatory or impeaching material within the meaning of *Brady*.

b. *The police report*

The police report, which was authored by Officer Kliever, stated the following. On January 21, 2014 Kliever and Officer Smith responded to a call regarding a family dispute. They met with Tequida McMillion, who stated she was concerned for the safety of her mother, Gardner. Gardner had been dating Williams. McMillion believed Williams was controlling Gardner and would not let her leave the house. McMillion told the officers that Williams was on probation and in possession of a silver handgun, which he regularly brandished as a means of controlling Gardner. Both McMillion and Gardner had seen Williams with the gun. Williams sometimes hid the gun at the bottom of a set of drawers inside the residence. Using departmental resources, Officer Smith located a picture of Williams, which McMillion identified. Smith confirmed Williams was on active felony probation with a search condition.

Based upon the foregoing information, the officers went to Gardner’s residence to investigate possible domestic violence and false imprisonment. Sergeant Coleman joined them. When the officers arrived, Gardner, Williams, and two other persons were present. Williams was detained for investigation and a probation compliance check.

Kliever interviewed Gardner. She told him that she and Williams had been living together for four months, and she feared Williams because of his violent tendencies, controlling actions, and his ownership of a silver handgun. She stated Williams broke her cellular telephone and would sometimes prevent her from leaving the house. Her fingers

had been broken in a New Year's Eve altercation in which she attempted to hold Williams back and prevent him from attacking McMillion.

Gardner gave the officers permission to search her residence. Officer Guerrero located a stainless steel nine-millimeter handgun underneath the bottom drawer of a cabinet in a storage area next to the kitchen. It was loaded and appeared to be in good working order. Officer Smith showed Gardner the gun and she positively identified it as belonging to Williams. McMillion identified it as the gun she had seen Williams possess.

Williams was arrested and transported to the police station. After he was advised of his *Miranda*⁵ rights he gave officers a written statement in which he said that the handgun did not belong to him but he was aware that it was in the residence. He stated the handgun was kept in the house for protection and he picked it up and hid it when the police arrived at the house.⁶

At the jail, Officer Smith asked Williams how much he had paid for the gun. Williams stated that he paid approximately \$250. He stated he had been having trouble with other members of his gang, who had "shot up" the residence, so he obtained the gun for protection. Smith "ran the serial number of the handgun" and discovered it had been reported stolen.

c. Defense counsel's declaration in support of the Pitchess motion

Defense counsel's declaration explained Williams's defense as follows. "Mr. Williams denies the facts in the arrest report. On January 21, 2014, [he] was with Ms. Gardner[], her son, Terro McMillion, and his girlfriend at Ms. Gardner's house. All of a sudden approximately 15 officers barged into the house. As Mr. Williams walked out of the bedroom, officers immediately placed handcuffs on Mr. Williams and detained

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

⁶ Williams's handwritten statement was attached to the report. It stated: "I stay with my girl and her son. Yea there was a gun in the house. But it was not mine. But I did get up to grab it where he had it to go hide it. We had it there, for protection from everything that[']s been happening."

him. The officers then threatened the defendant and told him that he had to make a statement. The defendant repeatedly told the officers that the gun did not belong to him. The officers kept threatening the defendant and after he denied possession of the gun, he told the officers that he had nothing to say. The officers continued to threaten the defendant saying that if he did not write down a statement they were not going to give him any water or food. The defendant had been in custody for several hours and was extremely thirsty so he complied and wrote a statement denying possession of the recovered gun in order to get some water and food. The defendant never made an oral statement to Officer Smith that he bought the gun for protection nor did he state that he paid \$250.00 for the gun. The defendant denies possession of the gun. The gun belonged to another person that resided at the location.”

d. *The trial court’s ruling*

The L.A.P.D. opposed the motion.

The trial court granted the motion in part. As relevant here, it found Williams had established good cause for an in camera review of Officer Smith’s records for complaints regarding false statements and fabrication of probable cause. It concluded Williams had not shown good cause for a review of Officer Guerrero’s records.

On July 22, 2014 the trial court conducted an in camera review of Officer Kliever’s and Smith’s records and determined no discoverable information existed.

2. *Procedure*

Trial was by jury. Williams was convicted of possession of a firearm by a felon (§ 29800, subd. (a)(1)). He admitted serving three prior prison terms within the meaning of section 667.5, subdivision (b). The trial court denied Williams’s motion for a new trial, brought on grounds of prosecutorial misconduct. It struck one of the section 667.5, subdivision (b) allegations and sentenced Williams to a “split” or hybrid term of two years in jail followed by two years of mandatory supervision, pursuant to section 1170, subdivision (h). It imposed a restitution fine, a court operations assessment, and a criminal conviction assessment. Williams appeals.

DISCUSSION

1. *The Pitchess motion*

Williams argues that the trial court's ruling was erroneous in several respects. He avers that there was good cause for an in camera review of Officer Guerrero's records and the trial court improperly restricted the scope of review of Officer Smith's records. We disagree.

a. *Applicable legal principles*

On a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer who is accused of misconduct against him. (*People v. Gaines* (2009) 46 Cal.4th 172, 179; *People v. Samuels* (2005) 36 Cal.4th 96, 109.) "To initiate discovery, the defendant must file a motion supported by affidavits showing 'good cause for the discovery,' first by demonstrating the materiality of the information to the pending litigation, and second by 'stating upon reasonable belief' that the police agency has the records or information at issue. [Citation.]" (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019 (*Warrick*); *Sisson v. Superior Court* (2013) 216 Cal.App.4th 24, 33-34; *People v. Moreno* (2011) 192 Cal.App.4th 692, 701.) If a defendant shows good cause, the trial court examines the material sought in camera to determine whether disclosure should be made and discloses "only that information falling within the statutorily defined standards of relevance." (*Warrick*, at p. 1019; *Moreno*, at p. 701.) "The trial court may not disclose complaints more than five years old, the 'conclusions of any officer' who investigates a citizen complaint of police misconduct [in a criminal proceeding,] or facts 'so remote as to make [their] disclosure of little or no practical benefit.' " (*Warrick, supra*, at p. 1019.)

"There is a 'relatively low threshold' for establishing the good cause necessary to compel in camera review by the court. [Citations.]" (*People v. Thompson* (2006) 141 Cal.App.4th 1312, 1316; *Warrick, supra*, 35 Cal.4th at p. 1019.) Counsel's declaration must describe a specific and plausible factual scenario that would support a defense claim of officer misconduct, propose a defense to the pending charges, and

articulate how the discovery sought might be admissible or lead to relevant evidence. (Warrick, at p. 1024; *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 71; *Thompson*, at p. 1316.) “A scenario sufficient to establish a plausible factual foundation ‘is one that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges.’ [Citation.]” (*Thompson*, at p. 1316, italics omitted; *Warrick*, at p. 1026.) A defendant need not establish that it is reasonably probable his version of events actually occurred, provide corroborating evidence, show that his story is persuasive or credible, or establish a motive for the officer’s alleged misconduct. (Warrick, at pp. 1025-1026; *Thompson*, at pp. 1316-1317.) Discovery is limited to instances of officer misconduct related to the misconduct asserted by the defendant. (Warrick, at p. 1021; *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1021; *People v. Hill* (2005) 131 Cal.App.4th 1089, 1096, fn. 7, disapproved on another ground in *People v. French* (2008) 43 Cal.4th 36, 48, fn. 5.)

Trial courts are vested with broad discretion when ruling on *Pitchess* motions (*Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1086), and we review a trial court’s ruling for abuse. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 992; *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039.)

b. *Williams failed to establish good cause for an in camera review of Officer Guerrero’s records*

The trial court correctly ruled that Williams failed to establish good cause for an in camera review of Officer Guerrero’s records. The police report stated that Guerrero found the gun beneath the bottom drawer of a cabinet. Williams did not deny that the gun was in the house or that it was discovered in that location. He fails to explain how the officer’s discovery of a handgun that was admittedly present constituted misconduct that would support a defense to the charged crime. Good cause is not established where an officer is not alleged to have committed misconduct that would support a defense to the charged offense. (See *People v. Hill*, *supra*, 131 Cal.App.4th at p. 1098.)

Williams argues that the motion alleged misconduct against Officer Guerrero because Guerrero “claim[ed] to find a firearm at the Gardner residence and to attribute its ownership to appellant.” But the police report does not suggest Guerrero made such an assertion; there is no indication Guerrero attributed the gun’s ownership to anyone. Williams also contends Guerrero committed misconduct by “falsifying evidence and coercing appellant into making a written statement.” But counsel’s declaration did not specifically aver that Guerrero was one of the officers who allegedly coerced Williams into writing the statement. According to Williams, many officers descended upon the house. Counsel’s declaration did not specify which of these officers allegedly coerced the statement. Williams therefore failed to set forth a specific factual scenario in which Guerrero allegedly committed misconduct. Given the vague nature of the allegation as to who made the coercive threats, the trial court did not abuse its discretion by denying an in camera review as to Guerrero’s records.

c. The trial court properly limited the scope of the in camera review of Officer Smith’s records

Williams next argues that the trial court impermissibly restricted the scope of the in camera review of Officer Smith’s records. We disagree. Counsel’s declaration averred that Officer Smith falsely stated that Williams said he purchased the gun for \$250, for protection. The misconduct alleged against Officer Smith, therefore, was writing a false police report. (See generally *People v. Hustead* (1999) 74 Cal.App.4th 410, 418.) The trial court found good cause for a review of Smith’s records for “false statements of police officers” and “fabricated probable cause.”⁷ These categories were broad enough to encompass many of the other, overlapping categories requested in the

⁷ At the hearing on the *Pitchess* motion, the trial court stated Williams had established good cause for a review of complaints related to “false statements of police officers and arrest of fabricated probable cause.” At the in camera hearing, the court indicated it was reviewing the officers’ records for “two areas of inquiry. . . false statements and police reports and arrest of fabricated probable cause.” The references to “arrest” appear to be either misstatements or clerical errors. We do not interpret the trial court’s statements to indicate it found good cause for complaints regarding false arrest.

Pitchess motion, such as allegations of perjury, writing false police reports, or fabricating charges or evidence.

The other requested categories of information were either overbroad or unrelated to any alleged misconduct by Smith. A “showing of good cause must be based on a discovery request which is tailored to the specific officer misconduct that is alleged.” (*California Highway Patrol v. Superior Court*, *supra*, 84 Cal.App.4th at p. 1021.) “In other words, only documentation of past officer misconduct which is *similar* to the misconduct alleged by defendant in the pending litigation is relevant and therefore subject to discovery.” (*Ibid.*) In the instant matter, there was no allegation the search or seizure was illegal; Williams did not dispute that Gardner had consented to a search of the residence. There was no allegation that the gun was planted; therefore records relating to planting evidence were irrelevant. There was no allegation Officer Smith used excessive force; therefore, to the extent Williams sought such information, he failed to establish good cause. Nor did Williams establish good cause for a review of complaints related to false arrest. Counsel’s declaration did not challenge the police report’s account of McMillion’s and Gardner’s statements. As was the case with Officer Guerrero, and contrary to Williams’s argument, there was no specific allegation that Smith was one of the officers who allegedly threatened Williams and coerced a statement from him. Instead, the misconduct alleged was that Smith lied about what Williams told him at the police station. “A request for information that is irrelevant to the pending charges does not satisfy the specificity requirement.” (*People v. Hill*, *supra*, 131 Cal.App.4th at p. 1096, fn. 7; *Warrick*, *supra*, 35 Cal.4th at p. 1021; *People v. Hustead*, *supra*, 74 Cal.App.4th at p. 416.) To the extent Williams sought complaints about other types of misconduct— violation of constitutional rights, “dishonesty,” and misconduct amounting to moral turpitude – the requests were not supported by good cause in light of their vagueness and overbreadth. (See *California Highway Patrol*, *supra*, at p. 1024 [to grant discovery of peace officer records reflecting officer misconduct involving moral turpitude, without requiring a good cause showing, would undercut the statutory scheme

set forth in Evid. Code, § 1043].) Williams's assertion that he was entitled to information about *any* misconduct alleged against the officer is simply incorrect.

Williams also contends he was entitled to disclosure of L.A.P.D. Board of Rights disciplinary results, as well as information regarding all witnesses who testified at any such hearing. A defendant is entitled to disclosure of the outcome of disciplinary proceedings stemming from a citizen complaint filed against an arresting officer when that information is relevant. (*City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55, 57.) Here, the trial court's in camera review encompassed records from the Internal Affairs group and the Board of Rights office, insofar as any such materials related to false statements, false police reports, and fabrication of probable cause. To the extent Williams sought other information, his request was overbroad. As explained *ante*, a defendant is not entitled to any and all allegations of misconduct against an officer; he is only entitled to information regarding misconduct that is sufficiently similar to that he alleges occurred in the case at bar. (*California Highway Patrol v. Superior Court, supra*, 84 Cal.App.4th at p. 1021.) The Legislative intent in enacting the statutory *Pitchess* procedures was, in part, to protect peace officer personnel records "against 'fishing expeditions' conducted by defense attorneys." (*City of San Jose, supra*, at p. 54.) Nothing indicates that disciplinary results or complaints related to internal investigations were omitted from the trial court's review, if they fell within the categories for which good cause was established.

2. *Brady* disclosure

Williams's motion requested disclosure of any exculpatory or impeaching material within the meaning of *Brady v. Maryland, supra*, 373 U.S. 83. The motion averred that "Trial courts are specifically empowered to examine police personnel files for *Brady* material which is discoverable without regard to the five-year limitation applicable to *Pitchess* discovery." Williams contends that the trial court's ruling omitted any discussion of his request for *Brady* material, and therefore must be considered an implicit denial of the motion insofar as it pertained to such material. Accordingly, he avers the

trial court “unlawfully precluded [him] from discovering possible . . . *Brady* material” and seeks a conditional reversal and remand to allow the trial court to conduct an in camera review.

Williams is correct that the trial court did not separately rule on his *Brady* request. However, we do not consider this an implicit denial of the motion, as he suggests. It is settled that “where a court, through inadvertence or neglect, neither rules nor reserves its ruling, the party who objected or made the motion must make an effort to have the court actually rule, and that when the point is not pressed and is forgotten the party will be deemed to have waived or abandoned the point and may not raise the issue on appeal.” (*People v. Brewer* (2000) 81 Cal.App.4th 442, 461; accord, *People v. Vargas* (2001) 91 Cal.App.4th 506, 534, citing *People v. Roberts* (1992) 2 Cal.4th 271, 297 [“Because defendant failed to obtain a pretrial ruling on the issue and did not pursue his objection at trial, we will not address his contention, for it is procedurally barred”].)

The trial court’s ruling on Williams’s *Pitchess* motion did not preclude discovery of most *Brady* material. The “*Pitchess* scheme does not unconstitutionally trump a defendant’s right to exculpatory evidence as delineated in *Brady*. Instead, the two schemes operate in tandem.” (*People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1473; *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, 720.) The “statutory *Pitchess* procedures implement *Brady* rather than undercut it, because a defendant who cannot meet the less stringent *Pitchess* standard cannot establish *Brady* materiality. . . . [I]f a defendant meets the good cause requirement for *Pitchess* discovery, any *Brady* material in an officer’s file will necessarily be included. Stated conversely, if a defendant cannot meet the less stringent *Pitchess* materiality standard, he or she cannot meet the more taxing *Brady* materiality requirement.” (*People v. Gutierrez, supra*, at p. 1474; *People v. Superior Court (Johnson), supra*, at pp. 719-720; *People v. Thompson, supra*, 141 Cal.App.4th at p. 1319.) As applied here, this means that *Brady* information within the five-year period would necessarily have been included in the in camera review and disclosed if relevant.

Williams correctly argues that *Pitchess* discovery is in some respects more limited than *Brady* discovery because under *Pitchess*, a defendant is generally entitled to information going back five years, whereas *Brady* discovery includes no such limitation. (Evid. Code, § 1045, subd. (b)(1); *People v. Superior Court (Johnson)*, *supra*, 61 Cal.4th at p. 720; *Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1065.) We cannot ascertain from the record whether the custodian of records searched for complaints extending past the five-year cutoff. As this circumstance is the result of Williams's failure to obtain a ruling on the issue, it does not provide a basis for conditional reversal.

3. *Review of in camera examination of Officer Smith's records*

As Williams requests, we have reviewed the sealed transcript of the in camera hearing conducted on July 22, 2014, at which the trial court reviewed Officer Smith's records for complaints related to making false statements or police reports, and fabricating probable cause. The transcript constitutes an adequate record of the trial court's review of any documents provided to it, and reveals no abuse of discretion. (*People v. Myles* (2012) 53 Cal.4th 1181, 1209; *Alford v. Superior Court*, *supra*, 29 Cal.4th at p. 1039.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.